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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JEHAN ZEB MIR, M.D.,

12 Plaintiff,

13 v.

14 KIMBERLY KIRCHMEYER, et al.

15 Defendants.
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Civil No. 12cv2340-GPC (DHB)

**ORDER REGARDING
PLAINTIFF'S *EX PARTE*
APPLICATION TO COMPEL
DEFENDANT LEVINE TO
ANSWER PLAINTIFF'S
REQUEST FOR ADMISSIONS**

[ECF No. 154]

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19 On April 22, 2016, Plaintiff Jehan Zeb Mir, M.D. ("Plaintiff") filed an *ex parte*
20 motion requesting the Court compel Defendant Sharon Levine ("Levine") to answer
21 Plaintiff's first set of request for admissions and request to admit genuineness of
22 documents. (ECF No. 154.) Kirchmeyer filed an opposition to Plaintiff's *ex parte* motion
23 on May 13, 2016. (ECF No. 160.) For the reasons set forth below, Plaintiff's motion is
24 **DENIED.**

25 **I. BACKGROUND**

26 Plaintiff initiated this action on September 25, 2012, alleging Defendants wrongfully
27 took disciplinary action against Plaintiff's physician's and surgeon's certificate. (ECF No.
28 1.) On October 19, 2015, Plaintiff served a First Set of Request for Admissions on Levine.

(ECF No. 154 at 32-53.) On December 18, 2015, Levine responded. (ECF No. 154 at 55-75.)

Subsequently, on April 22, 2016, Plaintiff filed the instant *ex parte* motion requesting the Court to compel Levine to admit each of the 167 Request for Admissions he propounded.¹ (ECF No. 154.)

II. ANALYSIS

A. Failure to Comply with the Court's Procedures for Discovery Disputes

Plaintiff has failed to comply with this Court's procedures for filing discovery motions. First, Plaintiff has not complied with Section IV.C. of the undersigned Magistrate Judge's Civil Chambers Rules which requires the filing of a Joint Motion for Determination of Discovery Dispute.² Second, Plaintiff has not shown he adequately met and conferred

¹ The Court finds Plaintiff has only moved to compel responses to his Request for Admissions and not any Interrogatories that may have been served on Levine. In Plaintiff's motion, the opening paragraph states Plaintiff served Request for Admissions on Levine, and that "[o]n December 18, 2015, Defendant served Responses to Plaintiff's Request for Admissions and Request to Admit Genuineness of Documents." (ECF No. 154 at 2.) Then, in the next sentence, Plaintiff wrote "Defendant Levine did not answer any of the interrogatories, instead made same boiler-plate frivolous objections to each and every request for Interrogatory as a delaying and harassing tactic." (*Id.*) Thereafter, Plaintiff resumed referring to Requests for Admissions. (*Id.*) Plaintiff does not mention Interrogatories anywhere else in his motion, and Plaintiff has not attached any Interrogatories to the motion for the Court's consideration. Moreover, Plaintiff only requests the Court compel answers to his Request for Admissions. (*See id.* at 29 ("The Defendant should be ordered to answer Plaintiff's request to admit the genuineness of the documents and request to admit each of the 155 requests for admissions.")) It appears Plaintiff erroneously used the term "Interrogatories" in his opening paragraph to refer to his Requests for Admissions. Accordingly, the sufficiency of Levine's responses to Plaintiff's Interrogatories are not properly before the Court. Therefore, the Court will disregard Levine's arguments regarding the Interrogatories.

² The Chambers Rules are available at:
<https://www.casd.uscourts.gov/Rules/Lists/Rules/Attachments/17/Bartick%20Civil%20Chambers%20Rules.pdf>

1 with Levine prior to filing the instant motion. The duty to meet and confer prior to bringing
2 a discovery motion is required not only by this Court's Chambers Rules and the Southern
3 District's Civil Local Rules, but also by the Federal Rules of Civil Procedure. *See* Fed. R.
4 Civ. P. 37(a); Civ. L.R. 26.1(a). Plaintiff also failed to comply with the Court's rules
5 governing *ex parte* applications. *See* Civ. L. R. 83.3(h)(2).

6 Further, Plaintiff's motion is untimely. Pursuant to this Court's Chambers Rules, all
7 discovery motions must be filed "within forty-five (45) days of the date upon which the
8 event giving rise to the dispute occurred." Judge Bartick's Civil Chambers Rules IV(C).
9 For written discovery, the event giving rise to the dispute is the date of the service of the
10 initial response. *Id.* Here, the event giving rise to the dispute was the date Levine
11 responded to Plaintiff's Request for Admissions, which was December 18, 2015. (ECF
12 No. 154 at 55-75.) Therefore, the deadline for this discovery motion to be filed was
13 February 1, 2016. Plaintiff's motion to compel was filed nearly three months late, and
14 Plaintiff has not provided any justification for his untimeliness.

15 Previously, Plaintiff was warned that all discovery disputes must comply with the
16 Court's rules. (*See* ECF No. 146 at 2 (advising the parties that "all discovery disputes must
17 be filed in accordance with the time limits, and filing procedures set forth in Judge Bartick's
18 Civil Chambers Rules").) It would be well within the Court's discretion to reject Plaintiff's
19 motion for these reasons. However, in the interest of justice, the Court will address the
20 merits of the parties' dispute. **Nevertheless, Plaintiff is advised that any future**
21 **discovery motion will not be considered unless the Court's rules and procedures are**
22 **complied with.**

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1 **B. Plaintiff's Motion to Compel Admissions**

2 Requests for Admissions ("RFAs") are governed by Federal Rule of Civil Procedure
3 36, which provides:

4 A party may serve on any other party a written request to admit, for the
5 purposes of the pending action only, the truth of any matters within the scope
6 of Rule 26(b)(1) relating to:

- 7 (A) facts, the application of law to fact, or opinions about either; and
8 (B) the genuineness of any described document.

8 Fed.R.Civ.P. 26(a)(1).

9 Rule 36 does not limit the number of RFAs that may be propounded, however, the
10 Court's Local Rules do. Civil Local Rule 36.1 states:

11 No party will serve on any other party requests for admission which,
12 including subparagraphs, number more than **twenty-five** requests for
13 admission without leave of court. Any party desiring to serve additional
14 requests for admission must submit to the court a written memorandum
15 setting forth the proposed additional requests for admission and the reasons
16 establishing good cause for their use.

16 Civ.L.Rule 36.1(a) (emphasis added). *See also* Fed.R.Civ.P 26(b)(2)(A) (authorizing
17 district courts to limit the number of requests under Rule 36 by local rule.)

18 The party answering an RFA must admit, deny, or state in detail why the party cannot
19 truthfully admit or deny the matter. Fed.R.Civ.P 36(a)(4). Qualified answers are proper if
20 the responding party specifies the part admitted and qualifies or denies the rest. *Id.* The
21 responding party may also assert lack of sufficient information or knowledge as a reason
22 for failing to admit or deny the matter, as long as the party states that "it has made
23 reasonable inquiry and that the information it knows or can readily obtain is insufficient to
24 enable it to admit or deny." *Id.*

25 1. RFA Nos. A.1 - A.12

26 In Request for Admissions Nos. A.1 through A.12, Plaintiff requested that Levine
27 authenticate certain documents. Levine responded to the RFAs by either making qualified
28 admissions (A.3-A.6, A.8-A.9, A.12) or indicating she had insufficient information to

enable her to admit or deny the request (A.1-A.2, A.7, A.10-A.11). The Court finds Levine's responses are sufficient. Therefore, the Court will not compel further responses.

2. RFA Nos. B.1 – B.13

In Request for Admissions Nos. B.1-B.13, Plaintiff requested Levine admit various factual matters. Levine again responded appropriately by denying two requests (B.2 and B.4.), making a qualified admission as to one request (B.3), and by indicating she lacked sufficient information to admit or deny the remaining requests (B.1, B.5-B.13.). In light of Levine's verified discovery responses, the Court will not compel further responses.

3. RFA Nos. B.14 – B.155

Plaintiff propounded a total of 167 RFAs. Levine answered the first 25, and objected the remaining 142 on the basis that Plaintiff did not have leave of court to serve more than 25 requests under Civil Local Rule 36.1. The Court finds Levine acted reasonably in only responding to the first 25 requests. Under the Local Rules, the limit on RFAs is 25. Civ.L.R. 36.1. Plaintiff never sought leave to go beyond this limit, and the Court does not find good cause to permit Plaintiff to propound an additional 142 RFAs. Accordingly, the Court will not order Levine to further respond to RFA Nos. B.14 through B.155.

III. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED** that Plaintiff's *Ex Parte* Application to Compel Defendant Sharon Levine to Answer Plaintiff's Request for Admissions is **DENIED**.

IT IS SO ORDERED.

Dated: June 22, 2016



DAVID H. BARTICK

United States Magistrate Judge